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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,538

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Martinus W.J.T. Kuijpers

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EXAMINER

LEYSON, JOSEPH S

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/723,538	Applicant(s) KUIJPERS ET AL.	
	Examiner JOSEPH LEYSON	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/5/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
The full name of each inventor (family name and at least one given name together with any initial) has not been set forth.

The declaration filed on April 5, 2004 lists one inventor as Fredrik Ankersmit, which does not correspond to the declaration and the application data sheet (ADS), both filed on November 26, 2003, which lists the same inventor as Frederik Ankersmit. If “Fredrik” is the correct spelling, applicants should file a new, corrected ADS. If “Frederik” is the correct spelling, applicants should file a new, corrected declaration.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 10, 22. The examiner suggests inserting --10-- after “a conventional sausage making machine” in lines 15 and 16 on p. 3; and inserting --22-- after “a conventional linker assembly” in lines 20 and 21 on p. 3.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing

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sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 58A. The examiner suggests changing "18" in fig. 8 to --58A--.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because "44" in fig. 5 and "44" in fig. 5A should both be changed to --52-- to designate the passage above the restrictor element 44, as understood from the disclosure; and because "18" in fig. 8 should be changed to --58A-- to designate the discharged sausage strand, since the extrusion tube 18 is not even shown in fig. 8.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities: the title, abstract, and brief summary of the invention should be changed to reflect the claimed invention, i.e., apparatus only; the status of the parent case on p. 1 (in the amendment filed on November 26, 2003) should be updated, i.e., now abandoned or now U.S. Patent #; and on p. 3, line 8, "restrictor element 48" should be changed to --restrictor element 44-- as understood from the rest of the specification.

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Appropriate correction is required.

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the subject matter of claims 20, 21, 23 and 24 should be included in the disclosure.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 22 recites that a downstream end of the resistor element is approximately 100mm from the discharge end, which was not originally disclosed and thus is new matter. The examiner suggests changing “100mm” to --10mm-- as understood from the originally filed specification.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Humphrey (US 1,585,149).

Humphrey (US 1,585,149) teaches an extrusion tube 4, comprising, an elongated hollow tube 7, 11 having an intake end and a discharge end (i.e., figs. 1 and 2), a resistor element 12 in the tube 7, 11 to partially restrict the longitudinal movement of extrusion material therethrough. The resistor element 12 is capable of dividing the extrusion material passing through the tube 7, 11 into separate longitudinal portions comprised of first portion of extrusion material that passes, engages and is deflected to pass over the restrictor element 12, and a second portion (i.e., the portion that passes opposite of the restrictor element 12) that does not engage the restrictor element 12 and passes thereby without being deflected. The resistor element 12 is located in an off-center position within the tube 7, 11 (figs. 2 and 3). Note that the resistor element 12 can be placed at adjustable depths within the tube 7, 11 by screw 16, and thus, as shown by figs. 2 and 3, the cross sectional area of the restrictor element with respect to the cross sectional area in a hollow portion of the tube is capable of being between 1-2 to 1-8. The resistor element 12 engages a top portion of the hollow tube 7, 11 (i.e., the sides of the element 12 engage the top portion of the tube 7, 11, as shown in figs. 2 and 3), and has a concave arcuate surface on a bottom surface thereof (i.e., fig. 3). As to the claim recitations, such as "sausage", "meat emulsion" and "sausage emulsion", such recitations relate to

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the intended use of the claimed apparatus. A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987); see MPEP 2114.

“Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” Ex parte Thibault, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” In re Young, 75 F.2d 996, 25 USPQ 69 (CCPA 1935) (as restated in In re Otto, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). See MPEP 2115.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

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and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey (US 1,585,149).

Humphrey (US 1,585,149) discloses the apparatus substantially as claimed, as mentioned above, except for the cross sectional area of the restrictor element with respect to the cross sectional area in a hollow portion of the tube being between 1-2 to 1-8, or for a downstream end of the resistor element is approximately 100mm from the discharge end.

As to instant claim 20, if applicant does NOT agree that figs. 2 and 3 of Humphrey (US 1,585,149) shows that the cross sectional area of the restrictor element 12 with respect to the cross sectional area in a hollow portion of the tube is capable of being between 1-2 to 1-8 after adjusting screw 16, as mentioned above, then it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the apparatus of Humphrey (US 1,585,149) such that the cross sectional area of the restrictor element with respect to the cross sectional area in a hollow portion of the tube is between 1-2 to 1-8 because such a modification would have been found in view of the teachings of Humphrey (US 1,585,149: p. 1, line 86, to p. 2, line 2) to find the optimum or operable position of the restrictor element to obtain a desired pressure of the extrusion material. Furthermore, note that instant claims 20 and

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22 are related to the dimensions of the claimed apparatus. Where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device, In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

As to claim 23, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the apparatus of Humphrey (US 1,585,149) such that the resistor element extends into the tube from the tube bottom, instead of the tube top, because it would be well within an artisan of ordinary skill to shift the location of apparatus parts when operation of the apparatus would not otherwise be modified, In re Japikse, 86 USPQ 70. Note that if the resistor element extends into the tube from the tube bottom, then the resistor element would engage a bottom portion of the hollow tube (i.e., the sides of the resistor element would engage the bottom portion), and the concave arcuate surface would be on a top surface of the resistor element.

14. Claims 24 and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey (US 1,585,149) in view of Carrow (US 3,815,637).

Humphrey (US 1,585,149) discloses the apparatus substantially as claimed, as mentioned above, except for an open passageway being formed above the resistor element having an elliptical cross-sectional shape, or for an inclined ramp being on an upstream end of the resistor element.

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Carrow (US 3,815,637) discloses a resistor element 9, 10, 11 having an inclined ramp on an upstream end of the resistor element (i.e., fig. 1 wherein the resistor element 10 is angled to define an upstream ramp inclined relative to extrusion flow). The resistor element has a concave inner end 15, 16, 17 of irregular configuration to provide streamlined flow of extrusion material and to avoid dead spots where extrusion material could otherwise collect, degrade and slough off into the extrusion material since the flow is directed and self-wiping (i.e., figs. 1, 3 and 4; col. 3, lines 18-34). The irregular configuration defines an open passageway formed above the resistor element having an irregular longitudinal cross-sectional shape.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the resistor element of Humphrey (US 1,585,149) with the resistor element of Carrow (US 3,815,637) because such a modification would provide streamlined flow of extrusion material and would avoid dead spots where extrusion material could otherwise collect, degrade and slough off into the extrusion material since the flow is directed and self-wiping. As to the irregular configuration being elliptical, such an elliptical configuration would have been found due to routine experimentation in finding optimum or operable irregular, concave configurations which provide streamlined, self-wiping flow, in view of the teachings of Carrow (US 3,815,637).

15. Claims 19-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyng (US 4,272,577) in view of Humphrey (US 1,585,149).

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Lyng (US 4,272,577: i.e., fig. 4; col. 5, lines 6-10) discloses a extrusion apparatus, comprising, an elongated hollow device having an extrusion material intake end and an extrusion material discharge end (fig. 4), a resistor element P in the device to partially restrict the longitudinal movement of extrusion material therethrough so as to divide the extrusion material passing therethrough into separate longitudinal portions comprised of first portion of extrusion material that passes, engages and is deflected to pass over the restrictor element P, and a second portion that does not engage the restrictor element P and passes thereby without being deflected (fig. 4). The resistor element P is located in an off-center position within the device (fig. 4). The resistor element P engages a bottom portion of the hollow device (i.e., fig. 4 wherein the sides of element P engage the bottom portion of the hollow device). An inclined ramp is on an upstream end of the resistor element P (fig. 4). However, Lyng (US 4,272,577) does not disclose the device being a tube.

Humphrey (US 1,585,149: figs. 1-3) discloses an extrusion apparatus including an elongated hollow tube for forming a tubular product.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the device of Lyng (US 4,272,577) to be a tube because such a modification would enable production of a tubular product, as disclosed by Humphrey (US 1,585,149).

As to instant claims 20 and 22, these claims relate to the dimensions of the claimed apparatus. Where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device

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having the claimed relative dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device, In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

As to the claim recitations, such as “sausage”, “meat emulsion” and “sausage emulsion”, such recitations relate to the intended use of the claimed apparatus. A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987); see MPEP 2114. “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Young*, 75 F.2d 996, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). See MPEP 2115.

16. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyng (US 4,272,577) in view of Humphrey (US 1,585,149) as applied to claims 19-22 and 25 above, and further in view of Carrow (US 3,815,637).

Carrow (US 3,815,637) discloses a resistor element 9, 10, 11 having a concave arcuate inner end 15, 16, 17 defining a top surface of irregular

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configuration to provide streamlined flow of extrusion material and to avoid dead spots where extrusion material could otherwise collect, degrade and slough off into the extrusion material since the flow is directed and self-wiping (i.e., figs. 1, 3 and 4; col. 3, lines 18-34). The irregular configuration defines an open passageway formed above the resistor element having an irregular longitudinal cross-sectional shape.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to further modify the resistor element with the resistor element of Carrow (US 3,815,637) because such a modification would provide streamlined flow of extrusion material and would avoid dead spots where extrusion material could otherwise collect, degrade and slough off into the extrusion material since the flow is directed and self-wiping. As to the irregular configuration being elliptical, such an elliptical configuration would have been found due to routine experimentation in finding optimum or operable irregular, concave configurations which provide streamlined, self-wiping flow, in view of the teachings of Carrow (US 3,815,637).

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Silvia et al. (US 2,446,493) and Looman, Jr. et al. (US 2004/0185132) are cited as interest to show the state of the art.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH LEYSON whose telephone number is (571)272-5061. The examiner can normally be reached on M-F 9AM-5:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gupta Yogendra can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert B. Davis/
Primary Examiner, Art Unit 1791
3/11/08

/J. L./
Examiner, Art Unit 1791